

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

BNSF RAILWAY COMPANY,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-14-616-L
)	
C.A.T. CONSTRUCTION INC., and,)	
THOMPSON LOGISTICS, LLC,)	
)	
Defendants.)	

SETTLEMENT CONFERENCE ORDER

On September 10, 2015, the undersigned conducted an initial telephone conference with counsel for the parties. Pursuant to that conversation, the Court directs the parties to attend a settlement conference on October 20, 2015, at 1:30 p.m. at the United States Courthouse, Room 1305, in Oklahoma City, Oklahoma.

In addition, the Court orders:

1. **WHO MUST ATTEND.** Each party to the settlement conference should be represented by the following:

- a. *The person or persons with actual decision-making authority for the party.*

In the case of an individual party, the conference must be attended by the party. In the case of a company or other entity, the conference must be attended by: (a) a person with knowledge of the relevant facts, and (b) a person who has discretion to commit the entity to settle all pending claims on terms up to and including the opponent's last demand. In the case of a governmental body, the conference must be attended by: (a) a person with

knowledge of the relevant facts, and (b) at least one of the body's current members, who has discretion to commit the entity to settle all pending claims on terms up to and including the opponent's last demand.

- b. *Insurers and/or subrogors.* If an insurance business may be liable to satisfy all or part of any possible judgment against a party to the settlement conference, the settlement conference must be attended by a representative of that insurance business. Counsel for any such party is responsible for notifying the insurance business of this requirement.

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- c. *Lead trial counsel.* The settlement conference must be attended by lead trial counsel for each party to the settlement conference.

2. SETTLEMENT CONFERENCE STATEMENTS. Each party to the settlement conference is directed to submit, at least 10 days before the conference, a statement in the form of a letter to Judge Goodwin. The statement should be no more than five pages. Pertinent exhibits may be attached; however, for documents that have been filed of record, the statements may simply refer to ECF citations. Submission of the statement should be by email to goodwin-orders@okwd.uscourts.gov or by mail/delivery to Judge Goodwin's chambers. A copy should also be emailed or mailed/delivered to opposing counsel for each party to the settlement conference. If the statement is sent by mail or commercial delivery, to either Judge Goodwin or opposing

counsel, it should be sent in time to be received no later than 10 days before the conference.

The following should be included in each statement:

- a. *Attendees*: List the persons who will attend the conference.
- b. *Facts*: Describe the facts and circumstances that gave rise to the parties' dispute.
- c. *Claims*: List the claims and counterclaims asserted by each party to the settlement conference.
- d. *Procedural History*: List any pending dispositive motions or other motions that could affect, in whole or in part, the viability of any claim or counterclaim.
- e. *Damages*: For each claim and counterclaim, provide a description of the damages that will actually, realistically be at issue at trial. The party asserting the claim or counterclaim should not just state the amount of damages sought for each such claim, but provide at least a brief description of how they intend to prove the amount of damages. The party defending against the claim or counterclaim should state the amount of damages it believes could realistically be proven for each such claim, and additionally may provide a description of any deficiencies it sees in the opponent's damages theory.
- f. *History of Settlement Negotiations*: Pursuant to LCvR 16.2(e), the parties shall have, before the settlement conference, exchanged at least one

settlement offer and one response. In the statement, provide a description of all prior settlement negotiations, including any negotiations/agreements with other parties (if the latter information is confidential, it may be included in the confidential statement described below).

- g. *Opening Position*: The party who is next in turn to make a settlement offer or response should state its opening position in his, her, or its statement.
 - h. *Optional Confidential Statement*: In addition to the five-page primary statement, counsel for each party may, in his or her discretion, submit a confidential statement in the form of a letter to Judge Goodwin. This statement should not be sent to opposing counsel. The statement should typically be no more than two pages and include any information that would be helpful for Judge Goodwin to know in advance, for example: obstacles to settlement, such as personality conflicts; “smoking gun” evidence, the importance of which a party does not yet want to reveal to an opponent (and which will not be revealed unless expressly authorized); and any “non-legal” consequences of a trial or settlement, whether for a party or an opponent.
3. **PRE-CONFERENCE COMMUNICATIONS.** Prior to the settlement conference, Judge Goodwin will often talk with counsel for the parties to a settlement conference, and on occasion with the parties themselves. These communications may be with all parties to the settlement conference, or only one side or the other. The purpose of the communications is to aid in the

judge's preparation for the settlement conference and to assess counsel's perception of prior negotiations, impediments to settlement, and objectives for the settlement conference. If Judge Goodwin has not initiated such a communication, and counsel believes it would be helpful to achieving settlement, he or she may request a conference with Judge Goodwin by contacting his settlement conference coordinator, Ms. Lauren Smith, at (405) 609-5440.

4. CONFERENCE. On the day of the conference, please report to Ms. Smith in Room 1305 on the first floor of the U.S. Courthouse in Oklahoma City, Oklahoma. The Court highlights two matters of special importance for the conference itself:

- a. Unless the parties directly request it, there will not be opening statements.

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- b. The parties should be prepared to discuss how much it will cost to litigate their dispute. This includes the amount expended to date for attorney fees, costs, and expert fees, as well as an estimate of such expenses through trial and through an appeal.

5. RELIEF FROM THE REQUIREMENTS IN LCvR 16.2 OR THIS ORDER:

The purpose of the settlement conference is to assist the parties to achieve a mutually-agreeable settlement. If a party has a need for relief from any provision of LCvR 16.2 or this Settlement Conference Order, please contact Ms. Smith at (405) 609-5440.

IT IS SO ORDERED this 15th day of September, 2015.

A handwritten signature in blue ink, reading "Charles B. Goodwin". The signature is written in a cursive style with a large, looping initial "C".

CHARLES B. GOODWIN
UNITED STATES MAGISTRATE JUDGE